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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC

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**APR 30 2001**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**In the Matter of**

**Ronald Brasher**

Licensee of Private Land Mobile Stations

WPLQ202, KCG967, WPLD495, WPKH771,

WPKI739, WPKI733, WPKI707, WIL990,

WPLQ475, WPLY658, WPKY903, WPKY901,

WPLZ533, WPKI762, and WPDU262

Dallas/Fort Worth, Texas

*Et al*

**EB DOCKET NO. 00-156**

To: Administrative Law Judge

Arthur I. Steinberg

**Opposition to Request for Sanctions And  
Response to Request for Opportunity to Cross Examine Witness**

1. The Enforcement Bureau hereby opposes the request for sanctions contained in the "Opposition to the Bureau's Motion to Reopen the Record and Request for Sanctions" filed by Ronald Brasher, Patricia Brasher, and DLB Enterprises, Inc. dba Metroplex Two-Way on April 24, 2001 (hereinafter "DLB"). In its pleading, DLB requested: 1) that the Bureau's motion be denied, 2) that the Bureau be sanctioned, and 3) that, if the Bureau's motion is granted, DLB be permitted the opportunity to cross examine Ms. Bolsover, the Bureau's handwriting expert, regarding proposed Enforcement Bureau Exhibit 79 ("EB Ex.79"). As explained below, the Bureau believes the request for sanctions is baseless and is an untimely request to reconsider rulings made at the hearing. However, the Bureau does not oppose DLB's request for an

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opportunity to cross-examine Ms. Bolsover regarding proposed EB Ex. 79 or its request to offer rebuttal regarding her testimony.<sup>1</sup>

2. DLB asserts that sanctions are appropriate because the Bureau acted in bad faith by withholding Ms. Bolsover's two supplemental reports in an attempt to prejudice its case. DLB also asserts that the Bureau's motion is frivolous and has no basis in law. These assertions are incorrect.

3. The Bureau had no legal obligation to provide opposing counsel with advance copies of its handwriting expert's reports.<sup>2</sup> Nevertheless, at the pre-trial hearing the Bureau agreed to share with opposing counsel Ms. Bolsover's initial report (which, at that time, was the only report contemplated from Ms. Bolsover) as soon as it was received. The Bureau did so. The Bureau also provided each of Ms. Bolsover's supplemental reports to opposing counsel shortly after receipt. Judge's Exhibit 3 was prepared on March 5, 2001. Bureau counsel received it on March 9, 2001 and provided it to DLB that day. A casual review of the attachments to the Bureau's motion demonstrates that Ms. Bolsover's latest report was provided to DLB within one week after it prepared by Ms. Bolsover (and less than one week after it was received by Bureau counsel).

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<sup>1</sup> The Bureau submits that cross-examination of Ms. Bolsover should be limited exclusively to EB Ex. 79 and that previously addressed matters should not be revisited. DLB should be required to demonstrate why the testimony of each proposed rebuttal witness is necessary.

<sup>2</sup> It should be noted that DLB gave no advance documentation to the Bureau regarding its handwriting expert or her opinions.

4. DLB asserts that the Bureau should be sanctioned because its motion does not have a basis in law. The legal basis cannot be separated from the underlying facts. The new evidence compels the conclusion that DLB's officers submitted the "client copies," which were forged documents, to the Commission and then offered perjured testimony regarding those documents. The Bureau was diligent in discovering this compelling additional proof of DLB's wrong doing. Upon discovery, the Bureau realized that its expert's testimony regarding Norma Sumpter's client copy signature was erroneous and needed correction. This is precisely the type of situation where it is appropriate to reopen the record.<sup>3</sup> The Bureau maintains that the legal requirements for reopening the record have been met. In any event, sanctions are inappropriate because the Presiding Judge is authorized, in cases where there may have been a substantial misrepresentation, to supersede the procedural requirements and "do justice to the parties and the larger public interest." *Linda Crook*, 3 FCC Rcd 1867, 1868 (Rev. Bd. 1988); see also *Crosthwait v. FCC*, 584 F.2d 550 (D.C. Cir. 1978), *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 ((D.C. Cir. 1969).

5. The Bureau's failure to find the "match" for the Norma client copy signature earlier, despite the fact that it had all of the documents in its possession,<sup>4</sup> was not caused by a lack of

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<sup>3</sup> See e.g. *Palmetto Communications Company*, 6 FCC Rcd 2193 (Rev. Bd. 1991). Further, the Communications Act at Section 312(a)(2) specifically authorizes the revocation of licenses in this situation.

<sup>4</sup> These documents are but two of the volumes of documents that the Bureau had in its possession. The Bureau received multiple boxes of documents during the investigation and trial of this matter, many containing signatures of various parties to the proceeding.

due diligence. It occurred because the Bureau did not know at the time that the client copies were forgeries and was diligently testing the veracity of a wide variety of evidence.<sup>5</sup> The standard for reopening the record is not “impossibility,” as DLB would have it, but instead involves an assessment of the Bureau’s diligence. The Bureau had no obligation to require its handwriting expert to compare each and every signature on each and every document it received with each and every signature of the same party “just in case” such an extensive examination *might* result in the discovery of pertinent evidence. The Bureau was duly diligent in requesting that the handwriting expert analyze what it considered at the time to be the “suspicious” documents submitted to the Commission.

6. Opposing counsel’s redundant use of obfuscatory, false and inflammatory allegations regarding Bureau counsel, the Bureau’s Motion and the record is inappropriate and, in and of itself, indicative of bad faith. Opposing counsel’s motives for the “name calling” are simple: to eliminate the objective expert testimony that is harmful to their case. Bureau counsel, however, have not misstated the law or the evidence in this case.

7. In its Opposition, DLB quotes the record, previously cited by the Bureau, wherein the Presiding Judge stated that if “any of the witnesses that are prepared . . . discovers that something major that they told us here during the hearing is no longer accurate, I would like to know.” And we can possibly reopen the record and take additional testimony. . . [W]hat we are trying to do here is to determine what in the world happened.” Tr.2246, lines 6-16 (emphasis added). The Judge’s directive does not contain the strictures that DLB assigns to it and is clearly applicable to

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<sup>5</sup> The Bureau had no indication that these two particular signatures were exact duplicates until its handwriting expert voiced her suspicions to Bureau counsel after the close of the Bureau’s case.

Ms. Bolsover. EB Ex. 79 constitutes “something major” because it is objective evidence of misrepresentations by Ronald and Patricia Brasher and confirmation of the testimony of Norma Sumpter. Additionally, Ms. Bolsover is seeking to correct an earlier misstatement at trial wherein she erroneously concluded that Norma Sumpter probably signed her client copy and that there was nothing to suggest that the signature had been traced. TR 2326, lines 5-12; TR 2335, lines 7-25; TR 2336, lines 1-6; Judge’s Exhibit 3. After additional analysis, Ms. Bolsover now believes that her testimony was incomplete and inaccurate. The Bureau requested that EB Ex.79 be received to correct her erroneous conclusion. Pursuant to the quoted dictates of the Presiding Judge, the Bureau was compelled to offer the corrected testimony contained in EB Ex.79.

8. Under *Evergreen*<sup>6</sup> the Bureau is required to demonstrate that the proffered evidence would “affect the ultimate disposition of this proceeding.”<sup>7</sup> Consequently, in its Motion the Bureau was, first, required to reveal the newly discovered evidence (EB Ex. 79) and, then, to review the conclusions to be made when this evidence is applied to the facts of the case. What DLB labels an “egregious and inflammatory statement,”<sup>8</sup> is actually nothing more than the logical conclusion to an objective analysis of EB Ex. 79 and the testimony of the witnesses regarding the pertinent documents. Consequently, the Bureau’s inclusion of its conclusions in its analysis of the evidence is required under *Evergreen* and is not the result of bad faith on the part of the Bureau.

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<sup>6</sup> *Evergreen Broadcasting Co.*, 7 FCC Rcd 6601 (1992) (“*Evergreen*”)

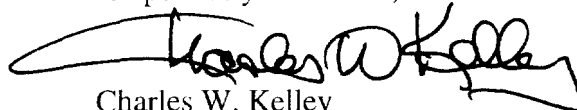
<sup>7</sup> *Id* at 6603, ¶11.

<sup>8</sup> Opposition, ¶19 ( “. . .that the Brashers have lied repeatedly. . . ,” citing Motion ¶5).

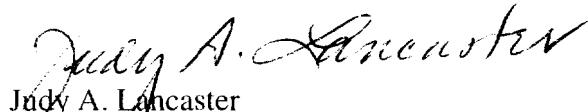
9. DLB mistakenly relies on Rule 403 of the Federal Rules of Evidence as support for its complaint that grant of the Bureau's motion will result in unfair prejudice. The Presiding Judge is not bound in this case by the Federal Rules of Evidence and the probative value of EB Ex.79 clearly exceeds any danger of unfair prejudice to DLB. EB Ex. 79 helps simplify rather than confuse the issues and clarifies evidence for the Presiding Judge rather than misleads him. If counsel's cross examination and rebuttal of Ms. Bolsover's testimony is limited only to relevant matters, there is no reason for introduction of EB Ex.79 to result in undue delay, waste of time or needless presentation of cumulative evidence.

10. Finally, DLB's requested sanction is inappropriate. The requested sanction essentially involves striking the supplemental report of Gail Bolsover, Judge's Exhibit 3, from the record. This exhibit was entered after a request by DLB's counsel that it be placed on the record. TR. 2328-30. The Judge moved its admission and DLB stated that it had no objection. TR. 2357. DLB's attempt to revisit this ruling is both untimely and unjustified.

Respectfully submitted,



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April 30, 2001

**CERTIFICATE OF SERVICE**

I, Lawrence Mwethuku, a paralegal for the Investigations and Hearings Division, Enforcement Bureau, certify that I have, on this 30th day of April, served, by the method indicated, copies of the foregoing "Opposition to Request for Sanctions and Response to Request for Opportunity to Cross Examine Witness" to:

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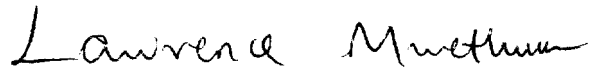
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Investigations and Hearings Division  
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